1947. **File No.** O/IPC/47

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G BRANCH

Subject:— Opinion Cases regarding Indian Penal Code.

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1.	10628 6-11-1947.	Section 265 and 415 Whether on the strength of evidence available it will be possible to bring home the charge of ~~x~~ cheating against Mr. D.D.Merchant Cashier in G.G.S. 89 in a court of law. -	1-2.

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The conduct of the godown-keeper and the weighing clerk would not be covered by section 265 of the Indian Penal Code, which deals with the fraudulent use of false weight or measure, or by any provisions of the special laws relating to weights and measures such as the Bombay Weights and Measures Act, 1932, or the Indian Weights and Measures of Capacity Act, 1871. The conduct can, if at all, be referred to the offence of cheating (cf. In Nurodin 1888 Cr. R.No. 36 of 1888, Ratanlal's Unreported Criminal Cases p. 386). It is no doubt true that by taking an excess weight from the agriculturists they were put to a loss of 2 maunds and 34 seers of wheat. But in order to establish the offence of cheating it must be proved that the persons deceived were fraudulently or dishonestly induced to deliver the wheat. It may be that a dishonest concealment of the true facts regarding the weights would be a deception within the meaning of section 415. But not only must the concealment be itself dishonest but it must also be accompanied by a fradulent and dishonest inducement. To prove dishonest concealment and dishonest or fradulent inducement, the intention either to deceive or to cause wrongful gain or wrongful loss must be established. There is apparently no evidence to show that the godown-keeper and the weighing clerk were interested in causing wrongful gain to Government; or to themselves by later secreting the excess grain. There is also no material to prove that they were interested in causing wrongful loss to the agriculturists. A man is no doubt presumed to intend the

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...ral consequences of his act ; but merely upon the strength of such a presumption without ~~xxyxx~~ anything more, it would be difficult to establish the requisite intention to deceive the agriculturists or to cause wrongful gain or wrongful loss I am therefore inclined to agree with the Public Prosecutor of Ahmedabad that a prosecution for cheating against the godown-keeper or the weighing clerk would not be feasible.

Sd/-P.M.Lad
5-11
Remembrancer of Legal Affairs.

U.R. to C.S.D NO. 10628 dated the 6th November 1947.

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